

Grants Policy Issuance (GPI) 12-04: Award and Administration of Foreign Grants

1.0 PURPOSE

This GPI consolidates and updates the policies and procedures governing the pre-award review, award, management and administration of EPA's foreign grants.

2.0 APPLICABILITY AND EFFECTIVE DATE

This GPI applies to all discretionary foreign grants awarded on or after April 26, 2012.

3.0 DEFINITIONS

For purposes of this GPI:

- a. Foreign grant** means a discretionary assistance agreement (grant or cooperative agreement) to a foreign government, international organization, or non-governmental international organization or institution.
- b. Foreign government** means any unit of foreign governmental authority, including any foreign national, state, local, and municipal government, and instrumentalities and agencies of the foreign government as determined by the law of the country.
- c. International organization** means any international or multinational organization whose membership is comprised predominantly of representatives of governmental or quasi-governmental organizations from two or more nations, or has a relationship with the U.S. Government established by, executive order, treaty or other international agreement recognized as valid by the U.S. Department of State. Examples include United Nations agencies, the Organization of American States and Organization for Economic Cooperation and Development.
- d. Non-governmental international organization or institution** means any private or public nonprofit institution or for-profit organization that is located in a country other than the United States and its territories and that is subject to the laws of that country.

4.0 STATUTORY AUTHORITY

- a. General Authorities** The National Environmental Policy Act (NEPA) § 102(2)(F), 42 U.S.C. § 4332(2)(F), directs all federal agencies, where consistent with the foreign policy of the United States, to lend appropriate support to initiatives, resolutions and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of the world environment. NEPA § 102(2)(F) therefore may be used as authority for activities with foreign governments and international and domestic organizations in the international arena to protect the quality of the environment. Since NEPA § 102(2)(F) alone does not provide grant authority, it must be used in conjunction with EPA's grant making statutory authorities, including, but not limited to:

- Clean Water Act § 104(b)(3), 33 U.S.C. § 1254(b)(3);
- Clean Air Act § 103(b)(3), 42 U.S.C. § 7403(b)(3);
- Solid Waste Disposal Act § 8001(a), as amended by the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6981(a);
- Toxic Substances Control Act (TSCA) § 10(a) note, 15 U.S.C. § 2609(a) note;
- Federal Insecticide, Fungicide, and Rodenticide Act § 20(a) note, 7 U.S.C. § 136r(a) note;
- Safe Drinking Water Act § 1442(c)(3), 42 U.S.C. § 300j-1(c)(3); and
- Marine Protection, Research, and Sanctuaries Act (MPRSA) § 203(a)(2), 33 U.S.C. § 1443(a)(2).

In order for any of the above statutes to apply internationally, they must be supplemented by NEPA § 102(2)(F). The Office of General Counsel (OGC) should be consulted if there is any question concerning the proper statutory authority for a foreign grant.

- b. Authority limited to Specific Countries:** The following statutory provisions provide specific authority to make grants to particular foreign countries and do not require additional citation to NEPA § 102(2)(F):
- National Environmental Education Act § 6(b)(5), 20 U.S.C. § 5505(b)(5), authorizes EPA to make grants related to environmental education and training programs for the design and demonstration of projects to foster international cooperation in addressing environmental issues and problems involving the United States and Canada or Mexico.
 - Section 510 of Pub. L. No. 100-4 (uncodified section of the Water Quality Act of 1987), authorizes EPA to make grants to the State Department, acting through the U.S. Section of the International Boundary and Water Commission, or any other federal agency or appropriate entity designated by the President. The grants may be used for the construction of wastewater treatment works along the US-Mexico Border, including defensive treatment works, to protect San Diego from Mexican wastewater pollution and treatment works in San Diego to treat municipal sewage and industrial waste from Mexico, including sewage and waste from the City of Tijuana.

5.0 PRE-AWARD

- a. Application Solicitation and Review:** The sponsoring Program Office is required to follow applicable requirements in the Policy for Competition of Assistance Agreements, EPA Order 5700.5A1, available at http://intranet.epa.gov/ogd/policy/order/5700_5.pdf, and associated guidance, in conducting any competitions that may result in foreign grants.
- b. Review by Office of International and Tribal Affairs (OITA):** If a foreign grant proposal is favorably received by the sponsoring Program Office and likely to be recommended for funding, the Program Office will prepare and forward to OITA documentation required for the review of the proposed foreign grant in accordance with established OITA procedures. The Deputy Assistant Administrator for OITA or his/her designee is responsible for reviewing the documentation and ensuring that the EPA complies with any applicable U.S. Department of State clearance requirements. OITA reviews submitted documentation to ascertain:

- The project’s benefit to any existing or proposed formal or informal intergovernmental arrangement;
 - The coordination and alignment of the EPA’s overall relationship with the foreign government, international organization, or non-governmental international organization;
 - The alignment of the proposed activity with EPA’s goals in advancing public health and environmental improvement; and
 - The extent to which the proposed activity complements rather than duplicates other EPA or U.S. government international environmental programs or initiatives.
- c. **Review Time:** Program offices should allow at least 10 calendar days for OITA review. Foreign proposals may not be awarded without clearance from OITA.

6.0 PROGRAMMATIC REQUIREMENTS

- a. **Negotiation:** Prior to or parallel with the OITA clearance process, Program Offices may communicate with a potential foreign recipient as necessary to conclude internal program-specific review of the application and to finalize programmatic terms and conditions. The communication and negotiations between the Program staff and the potential recipient must be limited to programmatic matters. If the potential foreign recipient seeks to negotiate administrative requirements, the Program Office must contact the appropriate Grants Management Office (GMO) to participate in the discussions with the foreign recipient. The GMO will contact and include OITA and OGC in the discussions as appropriate. Pre-award communication and/or negotiation should **never** be interpreted as official notification of a pending grant.
- b. **Progress Reports:** Regular progress reports are critical for monitoring project status, compliance with the scope of work and budget, and emergence of potential issues. As a result, the Program Office should ensure that the programmatic terms and conditions specify the required contents and frequency of periodic progress reports. The specific reporting requirements for each foreign grant should be based on the type and duration of the project. In addition, progress reports generally should be required at least every six months. In no event may progress reports be required more frequently than quarterly, or less frequently than annually.

7.0 FUNDING PACKAGE

In preparing the funding package for processing through the Integrated Grants Management System (IGMS), the Project Officer (PO) is responsible for entering complete and accurate information in the electronic funding recommendation, including the required information concerning the statutory authority for the foreign grant, the foreign location and activity, and the amount and source of the federal funding for the foreign activity. To ensure proper tracking and reporting of EPA’s foreign grant activity, POs should be mindful of the following:

- a. **Identification of Foreign Country:** In order to select NEPA § 102(2)(F) as a statutory authority in IGMS, the PO must identify the country or countries where the foreign activity will take place. If the PO is unaware of the proposed location of the foreign activity at the time of award, then NEPA § 102(2)(F) may not be selected in IGMS.

- b. **Change in Foreign Grant Information:** In the event of any change regarding the foreign nature of a grant after the agreement is awarded, including a change in the location of the foreign activity, the identification of new foreign activity, or a modification in the source or amount of the federal funding for the foreign activity, the PO is required to submit the new information to OITA for clearance in accordance with Section 5.0 of this GPI, and follow the IGMS change request procedures to capture the new information regarding the foreign activity.

8.0 ADMINISTRATIVE REQUIREMENTS

- a. **Application of Requirements:** Foreign grants are subject to the administrative requirements and policies set forth in the standard terms and conditions incorporated in the agreement. The terms and conditions generally include the administrative requirements and cost principles applicable to domestic recipients, except where application of those requirements to foreign recipients is inconsistent with U.S. international obligations, the laws and regulations of the foreign government, or is otherwise inappropriate for the foreign entity.
- b. **Administrative Standard Terms and Conditions:** The IGMS administrative database contains the administrative terms and conditions for foreign grants. The terms and conditions are consolidated in a general template applicable to all foreign entities, and separate specialized negotiated and approved templates that apply to specific foreign entities. The standard terms and conditions template is also accessible at http://www.epa.gov/ogd/grants_regulations_and_forms_new.htm. The assigned Grants Specialist is responsible for incorporating the applicable template of standard terms and conditions into the assistance agreement.
- c. **Modifications:** The Program Office may request a modification of the standard administrative terms and conditions by submitting a written request to the GMO for approval by the responsible Award Official. The request must provide supporting justification demonstrating the exceptional circumstances that necessitate the modification. The request also must include the concurrence of OGC and OITA. Program Offices should not negotiate any modifications of the applicable administrative standard terms and conditions without the participation of OGC, OITA, and the responsible Grants Specialists.

9.0 POST-AWARD MONITORING

Foreign grants are subject to the requirements of EPA's post-award monitoring Order 5700.6A2 CHG 2. In particular, the responsible PO and Grants Specialists are required to conduct annual baseline programmatic and administrative monitoring, as well as the requisite review of unliquidated obligations. Consistent with the applicable monitoring protocols, the reviews should include:

- a. Verifying the submission of timely and complete progress reports;
- b. Ensuring that progress reports reflect progress commensurate with the drawdown activity;
- c. Confirming compliance with the terms and conditions under the assistance agreement;
- d. Reviewing the financial status and unliquidated balance to identify and recommend the deobligation of any unneeded funds; and

- e. Maintaining complete and accurate documentation of the reviews, findings and resulting resolution of any identified issues.

10.0 ROLES AND RESPONSIBILITIES

a. Program Offices are responsible for:

- Providing OITA early notification of the proposed award and supporting documentation for review and clearance.
- Ensuring proper programmatic terms and conditions, including the appropriate requirements for periodic progress reports.
- Entering and updating, as necessary, complete and accurate foreign grant information in IGMS.
- Engaging the responsible Grants Specialists, OGC and OITA in any negotiations concerning the applicable administrative requirements and obtaining the concurrence of OGC and OITA and approval of the Award Official before agreeing to any modification of the standard administrative terms and conditions.
- Completing timely reviews of progress reports and monitoring of the foreign grant.

b. GMOs are responsible for:

- Ensuring that the funding recommendations and change requests for foreign grants include the necessary OITA clearance.
- Incorporating the applicable standard administrative terms and conditions in the assistance agreement.
- Participating in negotiations and approving, as appropriate, requested modifications or changes to the standard administrative terms and conditions.
- Completing the required post-award reviews and monitoring of the agreements.

c. OITA is responsible for:

- Reviewing a Program Office's requests and supporting documentation for clearance of a proposed foreign grant and informing the Program Office of its clearance determination.
- Conferring with the Program Office, OGC and the GMO on requested modifications of the applicable standard administrative terms and conditions.

d. OGC is responsible for:

- Providing timely legal counsel on the statutory authority for a proposed foreign grant.
- Providing legal advice and counsel on proposed modifications or deviations from standard administrative terms and conditions.

11.0 PERIODIC REVIEW OF GPI

The Office of Grants and Debarment, in consultation with OITA and OGC, will review the policies and procedures in this GPI periodically to determine their continued effectiveness.